



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

RTID 0648-XA840

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to Ferry Berth Improvements in Tongass Narrows, Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice; request for comments on proposed Renewal incidental harassment authorization.

SUMMARY: NMFS received a request from the Alaska Department of Transportation and Public Facilities (ADOT&PF) for the Renewal of their currently active incidental harassment authorization (IHA) to take marine mammals incidental to activity related to Phase 1 of the two-part ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK. These activities consist of activities that are covered by the current authorization but will not be completed prior to its expiration. Pursuant to the Marine Mammal Protection Act (MMPA), prior to issuing the currently active IHA, NMFS requested comments on both the proposed IHA and the potential for renewing the initial authorization if certain requirements were satisfied. The Renewal requirements have been satisfied, and NMFS is now providing an additional 15-day comment period to allow for any additional comments on the proposed Renewal not previously provided during the initial 30-day comment period.

DATES: Comments and information must be received no later than [*insert date 15 days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service. Written comments should be submitted via email to *ITP.DeJoseph@noaa.gov*.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. Attachments to comments will be accepted in Microsoft Word or Excel or Adobe PDF file formats only. All comments received are a part of the public record and will generally be posted online at <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act> without change. All personal identifying information (*e.g.*, name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Bonnie DeJoseph, Office of Protected Resources, NMFS, (301) 427-8401. Electronic copies of the original application, Renewal request, and supporting documents (including NMFS **Federal Register** notices of the original proposed and final authorizations, and the previous IHA), as well as a list of the references cited in this document, may be obtained online at: <https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act>. In case of problems accessing these documents, please call the contact listed above.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the “take” of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not

intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed incidental take authorization is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other “means of effecting the least practicable adverse impact” on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of such species or stocks for taking for certain subsistence uses (referred to here as “mitigation measures”). Monitoring and reporting of such takings are also required. The meaning of key terms such as “take,” “harassment,” and “negligible impact” can be found in section 3 of the MMPA (16 U.S.C. 1362) and the agency’s regulations at 50 CFR 216.103.

NMFS’ regulations implementing the MMPA at 50 CFR 216.107(e) indicate that IHAs may be renewed for additional periods of time not to exceed one year for each reauthorization. In the notice of proposed IHA for the initial authorization, NMFS described the circumstances under which we would consider issuing a Renewal for this activity, and requested public comment on a potential Renewal under those circumstances. Specifically, on a case-by-case basis, NMFS may issue a one-time one-year Renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Detailed Description of Specific Activity section of this notice is planned or (2) the activities as described in the Specified Activities section of this notice would

not be completed by the time the IHA expires and a Renewal would allow for completion of the activities beyond that described in the Dates and Duration section of this notice, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed Renewal IHA effective date (recognizing that the Renewal IHA expiration date cannot extend beyond one year from expiration of the initial IHA).

- The request for renewal must include the following:

- (1) An explanation that the activities to be conducted under the requested Renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.*, reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

- (2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

Upon review of the request for Renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

An additional public comment period of 15 days (for a total of 45 days), with direct notice by email, phone, or postal service to commenters on the initial IHA, is provided to allow for any additional comments on the proposed Renewal. A description of the Renewal process may be found on our website at:

www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-harassment-authorization-renewals. Any comments received on the potential Renewal, along with relevant comments on the initial IHA, have been considered in the development of this

proposed IHA Renewal, and a summary of agency responses to applicable comments is included in this notice. NMFS will consider any additional public comments prior to making any final decision on the issuance of the requested Renewal, and agency responses will be summarized in the final notice of our decision.

The National Defense Authorization Act (Pub. L. 108–136) removed the “small numbers” and “specified geographical region” limitations indicated above and amended the definition of “harassment” as it applies to a “military readiness activity.”

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216-6A, NMFS must review our proposed action (*i.e.*, the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216-6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed Renewal IHA qualifies to be categorically excluded from further NEPA review.

We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA requests.

History of Request

On March 1, 2020, NMFS issued two, consecutive IHAs to ADOT&PF to take marine mammals incidental to Phase I and II activity related to ferry berth improvements and construction in Tongass Narrows, near Ketchikan, AK (85 FR 673; January 7, 2020), effective from March 1, 2020 through February 28, 2021. On December 28, 2020, NMFS

received an application for the Renewal of the initial Phase I IHA. As described in the application for Renewal IHA, the activities for which incidental take is requested consist of activities that are covered by the initial Phase 1 authorization but will not be completed prior to its expiration. As required, the applicant also provided a preliminary monitoring report (available at <https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements>) which confirms that the applicant has implemented the required mitigation and monitoring, and which also shows that no impacts of a scale or nature not previously analyzed or authorized have occurred as a result of the activities conducted.

Description of the Specified Activities and Anticipated Impacts

ADOT&PF will be unable to complete all of the planned work of the 2020 IHA (Phase 1) on the ferry berths in Tongass Narrows before the expiration date of February 28, 2021; therefore, they have requested a Renewal IHA to authorize take of marine mammals for the subset of the initially planned work among the four permanent project components (*i.e.*, new Revilla ferry berth, new Gravina Island Shuttle Ferry Berth and Terminal Improvements, Gravina Airport Ferry Layup Facility and the Gravina Freight) of Phase I that could not be completed. These planned construction activities would allow ADOT&PF to improve the reliability of the transportation system as well as access to Gravina Island and Ketchikan International Airport. The renewal request includes two minor changes to the activity. Specifically the number of days requested for temporary pile driving and providing for a higher maximum number of piles that may be installed per day via impact and vibratory driving (up from a max of three to eight piles). This change does not substantively affect the previous analysis or change the take estimate. Otherwise, the activity is identical to the initial IHA and includes four methods of pile installation: vibratory and impact hammers, down-hole drilling of rock sockets, and

installation of tension anchors at some locations (see Tables 1 and 2). Moreover, Phase II activities will only begin upon the completion of Phase I, as stated in the 2020 IHA.

Anticipated impacts would include both Level A harassment, which will be identical to those analyzed and authorized in the 2020 IHA, and Level B harassment of marine mammals (though fewer, since from a subset of activities). ADOT&PF's request is for take of a small number of eight species of marine mammals, by Level B harassment: Steller sea lion (*Eumetopias jubatus*), harbor seal (*Phoca vitulina richardii*), harbor porpoise (*Phocoena phocoena*), Dall's porpoise (*Phocoenoides dalli*), Pacific white-sided dolphin (*Lagenorhynchus bliquidentis*), killer whale (*Orcinus orca*), humpback whale (*Megaptera novaeangliae*), and minke whale (*Balaenoptera acutorostrata*). Of the eight species, three (harbor seal, harbor porpoise, and Dall's porpoise) may also be taken by Level A harassment. Monitoring results of the 2020 construction activities indicate that observed exposures above Level A and Level B harassment thresholds (see monitoring report) were below the amount authorized in association with the amount of work conducted; thus, the subset of Level A and Level B harassment take remaining from that authorized under the 2019 IHA will be sufficient to cover the 2020 pile installation and removal activities.

Detailed Description of the Activity

As discussed earlier, this is a Renewal to complete the subset of the activity not completed under the initial IHA (85 FR 673; January 7, 2020). Due to construction schedule delays, designated work was only conducted on 56 of the estimated 144 days (reduced to 101 days of pile driving activity planned in the 2020 IHA). ADOT&PF installed 11 temporary piles (of which one was already removed) and 41 permanent piles over approximately 23 construction days in 2020. As of the submission of their Renewal request, ADOT&PF expected to drive pile for 40 more days and complete installation of (27) 24-inch trestle piles, (5) 24-inch bridge abutment piles, (15) 24-inch floating fender

dolphin piles, 27 remaining sheet piles, and (10) 30-inch steel float piles for the Revilla New Ferry Berth and Upland Improvements between January 4 and February 28, 2021 under the 2020 IHA. As of February 2, 2021, the following work remains to be completed during the one-year 2021 renewal IHA: installation of 192 piles, 73 rock sockets, and 78 tension anchors and installation (38) and removal (40) of temporary piles. Although some work may be completed between February 2 and the expiration of the initial IHA (February 28), the applicant requests authorization for the work remaining as of February 2 outlined in Tables 1 and 2. The proposed Renewal would be effective for a period of one year from the date of issuance.

This Renewal request is nearly identical to that of the 2020 IHA, in that it is comprised of a subset of the work that was covered in the initial IHA, with two small changes that do not affect the previous analyses: the number of days requested for temporary pile driving and the maximum number of piles that may be driven in a day, which has been increased from three to eight.

Regarding the number of days of temporary pile driving, the initial IHA application specified 7-11 days of temporary pile driving would be needed to complete all projects during Phase 1. The temporary pile driving at the Revilla New Ferry Berth required 7 days, instead of the 2-3 days listed in the IHA application, because of subsurface boulders and weather conditions. It is expected that more days than initially anticipated will be needed to complete the remaining temporary pile driving; therefore, the renewal requests 5-8 days of temporary pile installation (the original needs of the remaining three component projects) to complete the work, which is still fewer than included in the initial IHA.

The mitigation and monitoring will be identical to that of the 2020 IHA, with the exception of enlarged shutdown zones that reflect the modified Level A harassment zones, which have changed because of the increased number of piles that may potentially

be driven concurrently. The shutdown zone for humpback whales will equal that of the Level A zone, while the pile driving shutdown zones for all other hearing groups are greater than Level A zones. A detailed description of the construction activities for which take is proposed here may be found in the notices of the proposed (84 FR 34134; July 17, 2019) and final IHAs (85 FR 673; January 7, 2020) for the 2020 authorization. All documents associated with the 2020 IHA (*i.e.*, the IHA application, proposed IHA, final IHA, public comments, monitoring reports, etc.) can be found on NMFS's website, <https://www.fisheries.noaa.gov/action/incidental-take-authorization-alaska-department-transportation-ferry-berth-improvements>.

Table 1. Permanent Pile Details and Estimated Effort Required for Pile Installation During 2021 Renewal

Project Component Pile Type	Number of Piles	Number of Rock Sockets	Number of Tension Anchors	Average Vibratory Duration Per Pile (minutes)	Average Drilling Duration for Rock Sockets Per Pile (minutes)	Impact Strikes Per Pile	Average Duration (minutes) per pile for vibratory	Average Piles per Day (Range)	Days of Installation
Revilla New Ferry Berth and Upland Improvements									
24" Pile Diameter	15	0	12	30	N/A	200	30	1.5 (1–3)	36
30" Pile Diameter	2	0	14	30	N/A	200	30	1.5 (1–3)	12
30" Sheet Pile	0	Completed	-	-	-	-	-	-	-
New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements									
24" Pile Diameter	65	52	25	15	120	50	15	1.5 (1–3)	44
30" Pile Diameter	8	4	4	15	180	50	15	1.5 (1–3)	5
27.6" Sheet Pile	74	N/A	N/A	15	N/A	N/A	15	6 (6–12)	12
Gravina Airport Ferry Layup Facility									
18" Pile Diameter	3	0	0	15	N/A	50	15	1.5 (1–3)	2
30" Pile Diameter	12	12	10	15	180	50	15	1.5 (1–3)	8
Gravina Freight Facility									
20" Pile Diameter	6	0	6	15	N/A	50	15	1.5 (1–3)	4
24" Pile Diameter	3	3	3		120	50	15	1.5 (1–3)	2
30" Pile Diameter	4	2	4	15	180	50	15	1.5 (1–3)	3
PHASE 1 TOTAL	192	73	78						128 ^a
a. Identically to Phase I, the assumption that two pieces of equipment are to be used concurrently on 30 percent of planned driving days reduces in-water construction to 90 days.									

Table 2. Numbers of Temporary Piles Planned to be Installed and Removed for each Project Component in 2021

Project Component	Number of Temporary Piles	Average Vibratory Duration Per Pile for Installation (minutes)	Average Vibratory Duration Per Pile for Removal (minutes)	Days of Installation	Days of Removal	Piles per Day
Revilla New Ferry Berth and Upland Improvements	8	0-currently installed	15	0	2 to 3	4 to 6
New Gravina Island Shuttle Ferry Berth/Related Terminal Improvements	12	15	15	2 to 3	2 to 3	4 to 6
Gravina Airport Ferry Layup Facility	8	15	15	1 to 2	0.75 to 2	4 to 6
Gravina Freight Facility	12	15	15	2 to 3	2 to 3	4 to 6
TOTAL	40	480 (8 hrs)	600 (10 hrs)	5-11	7-11	

Description of Marine Mammals

A description of the marine mammals in the area of the activities for which authorization of take is proposed here, including information on abundance, status, distribution, and hearing, may be found in the notices of the Proposed (84 FR 34134; July 17, 2019) and Final (85 FR 673; January 7, 2020) IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft Stock Assessment Reports (SARs), information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects which species or stocks have the potential to be affected or the pertinent information in the Description of the Marine Mammals in the Area of Specified Activities contained in the supporting documents for the initial IHA. Updated stock abundances were used in this analysis and take estimation calculations per the 2020 SARs.

Potential Effects on Marine Mammals and their Habitat

A description of the potential effects of the specified activity on marine mammals and their habitat for the activities for which take is proposed here may be found in the notices of the Proposed (84 FR 34134; July 17, 2019) and Final (85 FR 673; January 7, 2020) IHAs for the initial authorization. NMFS has reviewed the monitoring data from the initial IHA, recent draft SARs, information on relevant Unusual Mortality Events, and other scientific literature, and determined that neither this nor any other new information affects our initial analysis of impacts on marine mammals and their habitat. The applicant submitted the required preliminary monitoring results and the monitoring to date does not contradict the original take calculations or indicate impacts of a scale or nature not previously analyzed or authorized.

Estimated Take

A detailed description of the methods and inputs used to estimate take for the

specified activity are found in the notices of the Proposed (84 FR 34134; July 17, 2019) and Final (85 FR 673; January 7, 2020) IHAs for the initial authorization. Specifically, the source levels, days of operation, and marine mammal density/occurrence data applicable to this authorization remain unchanged from the previously issued IHA, with the exception of the fact that there are fewer days of operation since this activity is a subset of that covered in the initial IHA. Only the maximum number of piles that may be installed per day via impact and vibratory driving is increasing from a maximum of three to eight piles. Similarly, the stocks taken, methods of take, and types of take remain unchanged from the previously issued IHA, as do the number of takes (Level B harassment will be fewer, since from a subset of activities), which are indicated below in Table 3.

The potential installation of up to eight piles per day (from three) increases the potential maximum radius of the Level A harassment zone from 550 to 1010 meters (m) for low-frequency, 650 to 1200 m for high-frequency, and 300 to 550 m for phocid pinnipeds hearing groups when driving a 30-inch pile. However, the likelihood of marine mammals entering these zones and staying for a duration sufficient to incur permanent threshold shift is considered low, and the rationale and take estimates presented in the initial proposed IHA (which were based on the likelihood of an individual or group entering the area some number of times during the activity, as opposed to being based on a density) remain applicable. Further, the detections reported in the preliminary monitoring report do not suggest that the methods or estimated takes need to be modified, even in consideration of the potentially larger Level A harassment zones.

Table 3. Proposed Take Numbers to be Authorized by Species/Stock

Species	DPS/Stock	Estimated Number of Exposures to Level B Harassment	Estimated Number of Exposures to Level A Harassment	Total Estimated Exposures (Level A and Level B Harassment)
Steller sea lion	Eastern DPS	1,800	0	1,800
Harbor seal	Clarence Strait	765	18	783
Harbor porpoise	Southeast Alaska	109	15	124
Dall's porpoise	Alaska	317	15	332
Pacific white-sided dolphin	North Pacific	92	0	92
Killer whale	Alaska Resident	144	0	144
	Northern Resident			
	West Coast Transient			
Humpback whale ¹	Hawaii DPS	238	0	238
	Mexico DPS	15	0	15
Minke whale	Alaska	7	0	7
Note: DPS = distinct population segment.				
¹ Assumes that 6.1 percent of humpback whales exposed are members of the Mexico DPS (Wade <i>et al.</i> 2016).				

Description of Proposed Mitigation, Monitoring and Reporting Measures

The proposed mitigation, monitoring, and reporting measures included as requirements in this authorization are identical to those included in the **Federal Register** notice announcing the issuance of the initial IHA, and the discussion of the least practicable adverse impact included in that document and the notice of the proposed IHA (84 FR 34134; July 17, 2019) remains accurate with the minor modifications to the shutdown zones to reflect the revised Level A harassment zones. As with the initial IHA, pile driving shutdown zones greater than Level A Harassment zones will be implemented for all hearing groups (except for humpback whales, for which the shutdown zone will be equal to the Level A harassment zone). As noted previously, Level A harassment zones will increase for 24 and 30-inch impact driving in low-frequency, high-frequency, and Phocid pinnipeds hearing groups and the shutdown zones have been enlarged accordingly to encompass them (rounded up to the nearest 10 m, per NMFS standard practice, a slight change from the initial IHA, which included rounding to the nearest 50 m, as proposed by ADOT&PF). We have considered these changes to shutdown zones, and they do not change our determination that the proposed measures will affect the least practicable adverse impact on all affected species or stocks and their habitat.

The following measures are proposed for this renewal:

- Conduct briefings between construction supervisors and crews and the marine mammal monitoring team prior to the start of all pile driving activity, and when new personnel join the work, to explain responsibilities, communication procedures, marine mammal monitoring protocol, and operational procedures;
- For in-water heavy machinery work other than pile driving/removal and drilling (*e.g.*, standard barges, tug boats), if a marine mammal comes within 10 m, operations shall cease and vessels shall reduce speed to the minimum level required to maintain steerage and safe working conditions. This type of work could include the

following activities: (1) movement of the barge to the pile location; or (2) positioning of the pile on the substrate via a crane (*i.e.*, stabbing the pile);

- Work may only occur during daylight hours, when visual monitoring of marine mammals can be conducted;
- For any marine mammal species for which take by Level B harassment has not been requested or authorized, in-water pile installation/removal and drilling will shut down immediately when the animals are sighted;
- In the event that more than one contractor is working at the same time, they will maintain radio or cellular coordination in order to coordinate pile installation and removal and provide adequate monitoring by protected species observers; and
- If take by Level B harassment reaches the authorized limit for an authorized species, pile installation will be stopped as these species approach the Level B harassment zone to avoid additional take of them.

Establishment of Shutdown Zone for Level A Harassment—For all pile driving/removal and drilling activities, ADOT&PF will establish a shutdown zone. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Shutdown zones will vary based on the activity type, marine mammal hearing group, and in the case of impact pile driving, additional details about the activity including the expected number of pile strikes required, size of the pile, and number of piles to be driven during that day (See Table 4). The placement of protected species observers (PSOs) during all pile driving, pile removal, and drilling activities will ensure that the entire shutdown zone is visible during pile installation.

The shutdown zones shown in Table 4 apply when a single piece of equipment is in use. In addition, ADOT&PF will implement a shutdown zone of 100 m for each vibratory hammer on days when it is anticipated that multiple vibratory hammers will be

used. The ADOT&PF will also implement a shutdown zone of 100 m for each down-the-hole (DTH) drill on days when it is anticipated that two DTH drills will be used.

Table 4. Shutdown Zones During use of a Single Piece of Equipment

Activity	Pile Size (inches)	Minutes per Pile or Strikes per Pile	Piles Installed or Removed per Day	Level B Harassment Isopleth (m)	Shutdown Distances (m)				
					LF	MF	HF	PW	OW
Vibratory Installation	30	30 min	8	6,310	50				
	24, 18	30 min	8	5,420					
	27.6 sheet pile, 30.3 sheet pile	15 min	10	4,650					
Vibratory Removal	24, 16	30 min	5	5,420					
Drilling Rock Sockets	30	180 min	3	12,030	70	50	60	50	
	24, 18	120 min	3		60	50			
Impact Installation	30	50 strikes	3	2,160	250	50	250	150	50
			2		200		200	100	
			1		100		150	100	
		200 strikes	8		1010		1200	550	
			3		550		650	300	
			2		400		500	250	
			1		300		300	150	
			24		50 strikes		3	150	
	2	100		150			50		
	1	100		100			50		
	200 strikes	8		550	650		300		
		3		300	350		200		
		2		250	300		150		
		1		150	200		100		
	18	50 strikes	8	220	260		120		
			3	150	150		100		
			2	100	150		50		
			1	100	100		50		

Establishment of Monitoring Zones for Level B Harassment—ADOT&PF will establish monitoring zones, based on the Level B harassment zones which are areas where sound pressure levels (SPLs) are equal to or exceed the 160 dB rms (decibel root mean square) threshold for impact driving and the 120 dB rms threshold during vibratory driving, vibratory removal, and drilling. Monitoring zones provide utility for observing marine mammals by establishing monitoring protocols for areas adjacent to the shutdown zones. Monitoring zones enable observers to be aware of and communicate the presence of marine mammals in the project area outside the shutdown zone and thus prepare for a potential cease of activity should the animal enter the shutdown zone. On days and at times when a single piece of pile installation or removal equipment will be used, the Level B harassment zone will be monitored and implemented according to pile size, type, and installation method as outlined. The largest Level B harassment zone extends to a radius of 12,023 m in at least one direction up or down Tongass Narrows when a single piece of driving equipment is being utilized, making it impracticable for the PSOs to consistently view the entire harassment area. Due to this, detections of exposures above the Level B harassment thresholds will be recorded and takes will be estimated based upon the number of these observed detections and the percentage of the Level B harassment zone that was not visible.

When two or more pieces of equipment are used simultaneously, and the noise they produce is not continuous or is a combination of continuous and impulsive, Table 4, above, will be followed to define the Level A and Level B harassment monitoring zones for each piece of equipment.

On days when multiple pieces of equipment that produce continuous noise are used simultaneously, source levels will be determined as shown in Table 9, Table 10, Table 11, and Table 12 of the initial final IHA (85 FR 673; January 7, 2020). The calculated source level will be used to determine the Level B harassment monitoring

zones in accordance with values depicted in Table 14 of the initial final IHA (85 FR 673; January 7, 2020). The potential installation of up to eight piles per day (from three) will not affect the Level B harassment monitoring zones calculations as the maximum number of simultaneous pile installation activities (three) has not changed from the initial final IHA. The assumption stands that a minimum of two pieces of equipment will be used on 30 percent of construction days; therefore, decreasing the total number of pile installation days from 128 to 90 days as well as the number of days when the Level B harassment zone size could exceed 12,023 m. The increase to eight zones will require that daily activity combinations be planned appropriately by starting big and decreasing throughout the day.

Soft Start - The use of a soft-start procedure provides additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors will be required to provide an initial set of strikes from the hammer at reduced percent energy, each strike followed by no less than a 30-second waiting period. This procedure will be conducted a total of three times before impact pile driving begins. Soft Start is not required during vibratory pile driving and removal activities. If a marine mammal is present within the Level A harassment zone, soft start will be delayed until the animal leaves the Level A harassment zone. Soft start will begin only after the PSO has determined, through sighting, that the animal has moved outside the Level A harassment zone. If a marine mammal is present in the Level B harassment zone, soft start may begin and a take by Level B harassment will be recorded. Soft start up may occur when these species are in the Level B harassment zone, whether they enter the Level B harassment zone from the Level A harassment zone or from outside the project area.

Pre-Activity Monitoring - Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, the PSO will observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone will be cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the Level B harassment zone has been observed for 30 minutes and marine mammals are not present within the zone, soft start procedures can commence and work can continue even if visibility becomes impaired within the Level B harassment zone. When a marine mammal permitted for take by Level B harassment is present in the Level B harassment zone, piling activities may begin and take by Level B harassment will be recorded. As stated above, if the entire Level B harassment zone is not visible at the start of construction, piling or drilling activities can begin. If work ceases for more than 30 minutes, the pre-activity monitoring of both the Level B harassment and shutdown zone will commence.

Timing Restrictions - ADOT&PF plans to implement the Essential Fish Habitat (EFH) Conservation Recommendations developed by NMFS. These include a no in-water work timing window for three project components, Revilla New Ferry Berth and Upland Improvements, Gravina Airport Ferry Layup Facility, and Revilla Refurbish Existing Ferry Berth Facility, with no in-water work occurring between March 1 and June 15. Implementation of this timing window will likely reduce exposure/take of marine mammals to levels below what has been predicted, because some project locations will be able to install piles when other locations may not.

During Phase 2 in-water pile installation and removal on the Revilla Island side of the Narrows will be limited to no more than 2 hours that shall not coincide with in-water pile installation/removal activities on Gravina Island.

Based on our evaluation of the applicant's required measures NMFS has determined that the mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.*, presence, abundance, distribution, density).
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.*, source characterization, propagation, ambient noise); (2) affected species (*e.g.*, life history, dive patterns); (3) co-occurrence of marine mammal species with the action; or (4) biological or behavioral context of exposure (*e.g.*, age, calving or feeding areas).
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors.
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks.
- Effects on marine mammal habitat (*e.g.*, marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat).
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal and drilling activities. In addition, observers shall record all

incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

There will be at least one PSO present at or near each construction site during in-water pile installation and removal so that all Level A harassment zones and shutdown zones are monitored by a dedicated PSO at all times. PSOs will not perform duties for more than 12 hours in a 24-hour period. PSOs would be land-based observers, positioned at the best practical vantage points. At least one other PSO for each active worksite will begin at the central worksite and travel along the Tongass Narrows until they have reached the edges of the monitoring zones, based on the Level B harassment zones. These PSOs will then monitor the edges of the monitoring zone and as much as possible of the rest of the monitoring zone, looking for animals entering the Level B harassment zone. If waters exceed a sea state that restricts the PSO's ability to make observations within the Level A harassment zones (*e.g.*, excessive wind or fog), pile installation and removal must cease. Pile driving must not be re-initiated until the entire relevant Level A harassment zones are visible.

When combinations of one DTH drill with a vibratory hammer, two DTH drills, or two DTH drills with a vibratory hammer are used simultaneously, creating a Level B harassment zone that is greater than 12,023 m in radius, one additional PSO (at least two total) will be stationed at the northernmost land-based location at the entrance to Tongass Narrows. One PSO will focus on Tongass Narrows, specifically watching for marine mammals that could approach or enter Tongass Narrows and the project area. The second PSO will look out into Clarence Strait, watching for marine mammals that could swim through the ensonified area. This monitoring requirement for concurrent driving

scenarios was not included in the proposed IHAs. No additional PSOs will be required at the southern-most monitoring location because the Level B harassment zones are truncated to the southeast by islands, which prevent propagation of sound in that direction beyond the confines of Tongass Narrows. Takes by Level B harassment will be recorded by PSOs and extrapolated based upon the number of observed takes and the percentage of the Level B harassment zone that was not visible.

With this configuration, PSOs can have a full view of the Level A harassment zone and awareness of as much of the Level B harassment zone as possible. This monitoring will provide information on marine mammal occurrence within Tongass Narrows and how these marine mammals are impacted by pile installation and removal.

As part of monitoring, PSOs will scan the waters using binoculars, and/or spotting scopes, and will use a handheld GPS or range-finder device to verify the distance to each sighting from the project site. All PSOs will be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring will be conducted by qualified observers, who will be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator. Each construction Contractor managing an active construction site and on-going in-water pile installation or removal will provide qualified, independent PSOs for their specific contract. The ADOT&PF environmental coordinator for the project will implement coordination between or among the PSO contractors. It will be a required component of their contracts that PSOs coordinate, collaborate, and otherwise work together to ensure compliance with project permits and authorizations. Qualified observers are trained and/or experienced professionals, with the following minimum qualifications:

- Visual acuity in both eyes (correction is permissible) sufficient for discernment of moving targets at the water's surface with ability to estimate target size and distance; use of binoculars may be necessary to correctly identify the target;
- Independent observers (*i.e.*, not construction personnel);
- Observers must have their CVs/resumes submitted to and approved by NMFS;
- Advanced education in biological science or related field (*i.e.*, undergraduate degree or higher). Observers may substitute experience or training for education;
- Experience and ability to conduct field observations and collect data according to assigned protocols (this may include academic experience);
- At least one observer must have prior experience working as an observer;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

NMFS is requiring that ADOT&PF submit a preliminary marine mammal monitoring report for the work covered under the initial IHA and this renewal at least 4 months prior to beginning the work covered under their second IHA, referred to as Phase II (85 FR 673; January 7, 2020). This preliminary report must contain all items that would be included in the draft final report, listed below under “Reporting”. This will allow NMFS to assess the impact of the activities relative to the analysis presented here, and modify the IHA for Phase II if the preliminary monitoring report shows unforeseen impacts on marine mammals in the area. If needed, NMFS will publish an amended proposed IHA, describing any changes but referencing the original IHA for Phase II, and include an opportunity for the public to comment on the amended authorization.

In addition to the preliminary monitoring report discussed above, separate draft marine mammal monitoring reports must be submitted to NMFS within 90 days after the completion of both Phase 1 and Phase 2 pile driving, pile removal, and drilling activities. These reports will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the reports must include:

- Date and time that monitored activity begins and ends;
- Construction activities occurring during each observation period;
- Weather parameters (*e.g.*, percent cover, visibility);
- Water conditions (*e.g.*, sea state, tide state);
- Species, numbers, and, if possible, sex and age class of marine mammals;
- Description of any observable marine mammal behavior patterns,

including bearing and direction of travel and distance from pile driving activity;

- Distance from pile driving activities to marine mammals and distance

from the marine mammals to the observation point;

- Locations of all marine mammal observations;
- An estimate of total take based on proportion of the monitoring zone that was observed; and
- Other human activity in the area.

If no comments are received from NMFS within 30 days, that phase's draft final report will constitute the final report. If comments are received, a final report for the given phase addressing NMFS comments must be submitted within 30 days after receipt of comments.

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, ADOT&PF shall report the incident to the Office of Protected Resources, NMFS and to the Alaska Regional Stranding Coordinator as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
- Species identification (if known) or description of the animal(s) involved;
- Condition of the animal(s) (including carcass condition if the animal is dead);
- Observed behaviors of the animal(s), if alive;
- If available, photographs or video footage of the animal(s); and
- General circumstances under which the animal was discovered.

Preliminary Determinations

NMFS has preliminarily concluded that there is no new information suggesting that our analysis or findings should change from those reached for the initial IHA. This includes consideration of the minor changes discussed above, as well as stock abundance information. The estimated abundance of the West Coast Transient and Northern Resident Killer whale stocks and Steller sea lion Eastern U.S. stock have increased

slightly, whereas, the harbor seal, Clarence Strait stock decreased slightly. Based on the information and analysis contained here and in the referenced documents, NMFS has determined the following: (1) the required mitigation measures will affect the least practicable impact on marine mammal species or stocks and their habitat; (2) the authorized takes will have a negligible impact on the affected marine mammal species or stocks; (3) the authorized takes represent small numbers of marine mammals relative to the affected stock abundances; (4) ADOT&PF's activities will not have an unmitigable adverse impact on taking for subsistence purposes as no relevant subsistence uses of marine mammals are implicated by this action, and; (5) appropriate monitoring and reporting requirements are included.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA: 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species, in this case with the NMFS' Alaska Regional Office.

NMFS' Alaska Region issued a revised Biological Opinion to NMFS' Office of Protected Resources on December 19, 2019 which concluded that issuance of IHAs to ADOT&PF is not likely to jeopardize the continued existence of Mexico DPS humpback whales. Finally, the regional office determined that the renewal request (*i.e.*, the minor changes to the maximum number of piles per day) will not alter take or require re-initiation of the consultation.

Dated: March 1, 2021.

Donna S. Wieting,

Director, Office of Protected Resources,

National Marine Fisheries Service.

[FR Doc. 2021-04525 Filed: 3/4/2021 8:45 am; Publication Date: 3/5/2021]